Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
) CC Docket No. 01-92
Developing a Unified Intercarrier)
Compensation Regime)

COMMENTS ON THE MISSOULA PLAN

The Public Service Commission of the District of Columbia ("DCPSC") hereby respectfully files its Comments in response to the Wireline Competition Bureau's Public Notice and Order issued on July 25, 2006 and August 29, 2006, respectively, in the above-captioned proceeding.[1] The effect of the proposed Missoula Intercarrier Compensation Plan,[2] if adopted, on District of Columbia ratepayers would be to dramatically increase their contributions into the federal Universal Service Fund and require new payments into the Restructure Mechanism and the Early Adopter Fund, without obtaining any of the touted benefits of the Plan.

I. INTRODUCTION

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1 *Comments Sought on Missoula Intercarrier Compensation Plan*, Public Notice, CC Docket No. 01-92, DA 06-1510 (WCB, July 25, 2006) *See*, 71 Fed. Reg. 45510; Order, CC Docket No. 01-92, DA 06-1730 (WCB, August 29, 2006). *See*, 71 Fed. Reg. 54008.

2 Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications; Ray Baum, Commissioner and Chair, NARUC Task Force on Intercarrier Compensation; and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force on Intercarrier Compensation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed July 24, 2006).

The term "intercarrier compensation" refers to the system by which telecommunications carriers compensate each other for originating and terminating calls that are not completely on their own networks. There is a general consensus that the current intercarrier compensation system is highly problematic, since different carriers charge and receive different rates depending on the type of carrier and type of service. The Missoula Plan is an attempt to resolve the myriad problems with the current intercarrier compensation regime. In general, the Missoula Plan attempts to unify intercarrier compensation rates for carriers by dividing them into three separate tracks and requiring carriers to alter their rates depending on their track. Carriers are required to decrease their intrastate access rates, but in return are permitted to raise the subscriber line charge ("SLC") to compensate for the loss of revenue. Carriers that cannot obtain sufficient compensation from the SLC increase may obtain additional funding through a new Restructure Mechanism.[3] Additionally, states that have already rebalanced their intrastate access rates may collect additional funds from a new Early Adopter Fund.[4] Additionally, the Missoula Plan mandates changes in interconnection arrangements between carriers. Many of the objectives in the Missoula Plan are achieved by preempting state commission action.

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3 Missoula Plan at 64-76.

4 Missoula Plan at 76-77.

II. THE DCPSC'S INTEREST IN THIS PROCEEDING

The DCPSC regulates the gas, electric, and telecommunications industries in the District of Columbia. The DCPSC is interested in this proceeding because District of Columbia ratepayers currently pay into the federal Universal Service Fund and would be affected by any increases in payments to the Fund or other similar mechanism. The DCPSC also has an interest in fostering competition among its only incumbent local exchange carrier ("ILEC"), Verizon Washington DC, Inc., ("Verizon DC") and the competitive local exchange carriers ("CLECs") operating in the District of Columbia. After reviewing the Missoula Plan and the comments of interested participants in the District of Columbia, the DCPSC concludes that District of Columbia ratepayers and local telephone competition would be seriously harmed by the Missoula Plan if it is adopted in its current form. The DCPSC respectfully urges the Commission to reject the Missoula Plan as it is currently proposed.

III. THE MISSOULA PLAN MAKES NO EXCEPTIONS FOR JURISDICTIONS THAT HAVE NO INTRASTATE ACCESS CHARGES

The District of Columbia is comprised entirely of the city of Washington, D.C. and, as such, is only 67 square miles. All telephone calls made within the District of Columbia are local exchange calls. There is no intrastate toll, and thus no intrastate access charges, in the District of Columbia. Because many of the provisions of the Missoula Plan hinge on intrastate access charge reduction, it may adversely impact the District of Columbia. For example, carriers are permitted to increase their SLCs because they must reduce intrastate access charges. However, there are no provisions in the Plan prohibiting carriers from raising their SLCs in jurisdictions in which there are no intrastate access charges. Due to this silence, carriers may choose to raise their SLCs in the District of Columbia. If carriers in the District of Columbia raise their SLCs, ratepayers would have higher telephone bills because there is no offsetting reduction in intrastate access charges. Thus, District of Columbia ratepayers would experience rising telephone bills, as the SLC increases from its current rate of $3.85[5] for residential ratepayers in Step 0 to $7.15[6] at the end of Step 4. After Step 4, the SLC may rise with inflation.[7] District of Columbia ratepayers would receive no offset for these increases, so the trade-off between intrastate access charges and SLC charges would not exist in the District of Columbia. Ratepayers' bills would rise more than in other jurisdictions, where there may be such an offset.[8]

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5 Missoula Plan at 4, 19. This is the rate charged by Verizon DC, the District of Columbia's only incumbent local exchange carrier. CLECs may charge up to the national $6.50 SLC cap. Thus, the SLC charged by some carriers at the end of Step 4 could be the $10.00 cap outlined in the Missoula Plan.

6 As noted above, this charge would pertain to Verizon DC's SLC charges.

7 The DCPSC discusses only Track 1 SLC charges because all carriers in the District of Columbia are Track 1 carriers.

8 The Missoula Plan suggests, but does not require, that intrastate access charge reductions would be passed on to ratepayers.

IV. DISTRICT OF COLUMBIA RATEPAYERS WOULD BE PAYING MORE IN UNIVERSAL SERVICE SUPPORT UNDER THE MISSOULA PLAN, WHILE RECEIVING NO BENEFITS.

Adoption of the Missoula Plan would increase federal universal service payments[9] in at least five different areas, including increasing the size of the Universal Service Fund itself by at least $4.7 billion through increases in SLCs.[10] The High Cost Fund cap would increase by $300 million, and the Lifeline Fund would increase by $225 million. The Restructure Mechanism to compensate for decreased intrastate access charges that cannot be recovered through increases in the SLC would cost at least $1.5 billion.[11] The Early Adopter Fund to compensate states that have already rebalanced their intrastate access rates would cost at least $200 million (although that amount is unclear because the parameters of the Early Adopter Fund are ambiguous).[12] Taken together, these increases would increase the size of the federal Universal Service Fund from approximately $7 billion to over $9 billion, a 32 percent increase.[13]

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9 Missoula Plan at 88.

10 Missoula Plan at 100.

11 Missoula Plan at 13, 99. Another problem with the Restructure Mechanism is that only ILECs can receive funding from it, even though all carriers contribute to it.

12 Missoula Plan at 76-77.

13 Presentation by Billy Jack Gregg, West Virginia Consumer Advocate, to the Federal Communications Bar Association, September 27, 2006.

District of Columbia ratepayers, who are net payers into the existing universal service regime,[14] would be paying a disproportionate share of these increases. It is estimated that the average District of Columbia ratepayer's contribution to the federal universal service fund would increase from $38 to $50 annually.[15] This contribution would be in addition to the increase in average local exchange rates, estimated to increase from $26.63 to $30.02 on a national level.[16] Lifeline ratepayers would be the only District of Columbia ratepayers who would not be harmed by the Missoula Plan, as their SLCs would not increase.

Additionally, most carriers in the District of Columbia would not receive any payments from the greatly increased and new funds. Verizon DC, the only eligible telecommunications carrier ("ETC") in the District of Columbia, would be able to obtain compensation for foregone SLC payments from Lifeline customers. No telecommunications carrier, including Verizon DC, would be eligible for compensation from the Restructure Mechanism

[14] In 2003, the District of Columbia contributed 0.50 percent to the federal Universal Service Fund, while receiving 0.13 percent of the revenue. In 2004, the discrepancy was even greater: the District of Columbia contributed 0.50 percent while receiving 0.04 percent of the revenue. The District of Columbia is the only jurisdiction that does not receive high-cost support. The District of Columbia also does not receive any rural health care support. FCC Monitoring Report, Table 1.12, Universal Service Support Mechanisms by State: 2003 and 2004.

[15] *Formal Case No. 988, In the Matter of the Development of Universal Service Standards and the Universal Service Trust Fund for the District of Columbia*, Comments of the Office of the People's Counsel in Response to Order No. 14069 at 4, filed October 13, 2006.

[16] Missoula Plan, wireline-urban-low, wireline-urban-middle, wireline-urban-high charts. This figure is based on a national average increase in local exchange bills.

because there are no intrastate access rates to be reduced. Additionally, because there has been no intrastate access charge rate rebalancing, the District of Columbia will receive no Early Adopter funds.

In sum, the only District of Columbia stakeholders who will not be harmed by the Missoula Plan would be approximately 7,000 Lifeline customers, whose position would remain the same because their SLCs would remain the same. All other ratepayers in the District of Columbia would be harmed because their SLCs and other charges would increase to pay for the increased federal universal service fund needs, while they will be receiving no benefits from the increased funding.

V. THE MISSOULA PLAN WOULD PREEMPT DISTRICT OF COLUMBIA AUTHORITY OVER RECIPROCAL COMPENSATION.

The Missoula Plan seeks to preempt authority over reciprocal compensation rates. Section 252(d)(2) of the Telecommunications Act of 1996 ("the Act") makes it clear that state commissions are to determine just and reasonable reciprocal compensation rates.[17] The Supreme Court clarified that while the FCC has the authority to establish general pricing regulations, it is the states that have the ultimate responsibility to set rates according to these regulations.[18] The Missoula Plan upends this decision, creating reciprocal compensation rates for the states.[19]

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[17] 47 U.S.C. § 252(d)(2) (2000).

[18] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 384 (1999).

The Missoula Plan proponents argue that the FCC should preempt states by forbearing from applying section 252(d) of the Act and setting intercarrier compensation rates itself because the three conditions for forbearance in 47 U.S.C. § 160 are met.[20] These three conditions are: 1) enforcement of the statute is not necessary to ensure that charges are just and reasonable; 2) enforcement is not necessary to protect consumers; and 3) forbearance is in the public interest.[21] As the DCPSC has indicated above, the Missoula Plan does not protect consumers, especially those in the District of Columbia, because District of Columbia ratepayers will see large increases in their local telephone bills without any offsetting decreases. Thus, because one of the conditions for forbearance has not been met, the FCC should not forbear from applying section 252(d) and preempt state commission decisions over reciprocal compensation.

While the Missoula Plan does contain provisions that would not be mandatory for the states, these provisions are inapplicable in the District of

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19 Missoula Plan at 37. In the District of Columbia, the DCPSC determined that reciprocal compensation should be set according to bill and keep principles. At the time of that decision, the DCPSC decided not to set a transport and termination rate, but rather to wait until the DCPSC determines that a traffic imbalance exists. Then the DCPSC would determine an appropriate rate. The DCPSC based its determinations in part on the provisions of the District of Columbia Telecommunications Competition Act of 1996, codified at D.C. Code § 34-2002(h). *TAC 6, In the Matter of Consolidated Issues Raised in Petitions for Arbitration Pending before the Public Service Commission*, Order 5, at 47, rel. November 8, 1996. To date, no telecommunications service provider has requested the DCPSC to set a rate.

20 Missoula Plan, Legal and Policy Analysis at 7-8.

21 47 U.S.C. § 160(a) (2000).

Columbia.[22] As noted above, the District of Columbia has no intrastate access charges, so having flexibility to set these charges is irrelevant to the DCPSC. Additionally, the District of Columbia has no Track 3 carriers.[23] Thus, the Missoula Plan preempts the DCPSC even more than other state commissions. The DCPSC has no choices under the Missoula Plan.

VI. THE MISSOULA PLAN INCREASES STATE COMMISSION WORKLOAD BY REQUIRING STATE COMMISSIONS TO REVIEW AND ARBITRATE AMENDED INTERCONNECTION AGREEMENTS.

Section 252 of the Act grants state commissions the authority to arbitrate and approve interconnection agreements.[24] By setting default reciprocal compensation rates and by mandating different interconnection architecture than is currently included in most interconnection agreements,[25] the Missoula Plan overrides existing interconnection agreement terms and requires amendment of these agreements. These override provisions would apply to existing interconnection agreements that are in "evergreen" status because the parties have chosen to extend them beyond their original duration. Additionally, the Missoula Plan would preempt existing agreements unless there is specific language prohibiting such preemption,

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22 Missoula Plan at 3.

23 Missoula Plan at 4.

24 47 U.S.C. § 252 (2000). The Supreme Court reaffirmed that authority in *AT&T v. Iowa Utility Board*, 525 U.S. at 385.

25 Missoula Plan at 31-33.

language which is inconsistent with most existing change of law provisions.[26] Verizon DC, the District of Columbia's only ILEC, estimates that most of its interconnection agreements would be preempted by the Missoula Plan.[27] Thus, these agreements would have to be amended, invoking the section 252 negotiation and arbitration processes.[28] Preemption would impede competition by overriding trade-offs made by carriers in the interconnection agreement negotiation process. Creating default interconnection rules increases the possibility of regulatory arbitrage.[29] By setting default rules on interconnection at certain points in the network, the Missoula Plan creates disincentives to modernize networks. This preemption would also significantly increase the DCPSC's workload, particularly if Verizon DC and the CLECs arbitrate new interconnection agreements. The Missoula Plan does not present any compelling reason to override most interconnection agreements, so this additional work would not conserve state commission time and resources.

VII. CONCLUSION

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[26] Missoula Plan at 4.

[27] *Formal Case No. 988, In the Matter of the Development of Universal Service Standards and the Universal Service Trust Fund for the District of Columbia*, Comments of Verizon and Verizon Wireless to the Public Service Commission of the District of Columbia Order 14069 Concerning the Missoula Plan at 5 ("Verizon DC Comments"), filed October 10, 2006.

[28] Missoula Plan at 55.

[29] Verizon DC Comments at 3-5.

The Missoula Plan would not benefit ratepayers in the District of Columbia. Because there are no intrastate access charges to be reduced, there would be no offset as SLCs rise in the District of Columbia. Additionally, District of Columbia ratepayers would see their contributions to the federal Universal Service Fund rise, and they would also be required to contribute to the Restructure Mechanism and Early Adopter Fund, while receiving no benefits from these contributions. The only District of Columbia ratepayers to not experience increased bills would be Lifeline customers, but their bills would not be reduced; they would only remain the same.

Telecommunications carriers in the District of Columbia would gain no benefits from the Missoula Plan. Verizon DC would be the District of Columbia's only carrier eligible for increased funding, but only for foregone SLCs from Lifeline customers. Additionally, all carriers would be required to amend their interconnection agreements, a time-consuming and expensive process.

The DCPSC would also be aversely affected because its decisions over reciprocal compensation and interconnection agreements would be preempted. The DCPSC would have no ability to opt out of the Missoula Plan provisions, since there are no intrastate access charges or Track 3 carriers in the District of Columbia. The Missoula Plan would burden the DCPSC with reviewing and arbitrating interconnection agreement amendments, increasing the DCPSC's workload without permitting the DCPSC flexibility in implementing the Missoula Plan. For these reasons, the DCPSC opposes the Missoula Plan and respectfully requests the FCC to reject it.

Respectfully submitted,

_/s/______________________

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